

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2941 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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P I BUCH

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH for Petitioner

Mr.S.A. Pandya for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 01/07/97

ORAL JUDGEMENT

While dealing with bail application in relation to a crime registered with Una Police Station CR No.I 36/97 for offences under Sections 392 and 114 as originally recorded, to which subsequently offence under Sec.394 read with Sec.114 was sought to be added, some remarks came to be passed by the learned Judge of Junagadh in his order dated 29-3-1997 against Additional Public Prosecutor Shri P.I.Buch, the present petitioner. Even if some discrepancy is noted or brought to the notice of the Court from the record, remarks being made while dealing with a bail application are obviously premature. While considering a request for bail, the consideration for the concerned Court will be totally different and at that stage, there is hardly any question of anything being kept back from the Court. The Court can, on its own, ask for original case papers and could be satisfied itself with regard to the gravity of the offence and other related matters. As it happens, the bail application came to be rejected even in connection with offence under Sec.392 read with Sec.114, IPC. This

would make clear that offence under Sec.394 is not taken into consideration for bail purposes. The feeling of the learned Additional Sessions Judge is right in recording that offence under Sec.394 is of serious nature. However, that by itself is not enough to come to a conclusion that the learned Addl. Public Prosecutor appearing before him, has deliberately kept back something from the Court. This has been so done by the learned Judge without seeking any explanation whatsoever from the concerned Id.PP much less therefore, could it be said that the learned APP had any opportunity of explaining the entire episode.

2. As the stage of framing charge for the alleged new offence may not have come and as while considering the application for bail that offence has not been considered, obviously, the matter would not have proceeded upto the stage of recording evidence and in absence of any other material before the Court only in course of bail application if something has come to the notice of the learned Judge, such harsh remarks against the learned APP as they appear in the said order at page 3 going upto page 4, the portion of which is marked in red ink, ought not to have been passed. Under the circumstances, I have no hesitation in allowing the application for expunging the remarks.

3. In the result, the application is allowed. The aforesaid portion marked in red ink shall stand expunged from the original record. Rule is made absolute.
